

**WATER ALLOCATION PROGRAM DEVELOPMENT
WATER RIGHTS COMMITTEE**

MINUTES OF MEETING

June 3, 2003

Members Present:

John Garry
Al Bettencourt
Brian Bishop
Caroline Karp
Greg Schultz
John Schock
John Spirito
Bill Stamp

Members Absent:

Dale Thompson*
Kendra Beaver
Fred Crosby
Christopher D'Ovidio
Mary Ellen McCabe
Ken Payne
Paul Ryan

*on leave

Water Resources Board Staff:

Kathleen Crawley
Connie McGreavy

Guests:

DEM Student Intern

I. CALL TO ORDER:

John Garry called the meeting to order at 2:05 PM.

II. APPROVAL OF MINUTES

The minutes of the April 2, 2003 and May 6, 2003 meeting minutes were approved.

III. ITEMS FOR ACTION

A. Organization of Four Subgroups

Mr. Garry laid out a "Road Map for Summer". The committee will break into four functioning subgroups for a three-month period. At the end of the summer, each group will present a written report. Other members will be assigned to the subgroups.

<u>Subgroup</u>	<u>Lead</u>	<u>Other Members</u>
Agriculture	Al Bettencourt	Ken Ayars Bill Stamp Lee Gardiner
Drought Mgt.	Brian Bishop	Chris D'Ovidio Greg Schultz Caroline Karp
Takings	John Garry	Dale Thompson
Groundwater	Annette Jacques	Dale Thompson

1. Agriculture Group

Mr. Bettencourt presented a written report in which it was noted that nationwide, agriculture is usually a priority (#2). Mr. Bettencourt asserted that farmers should be compensated for water rights. Regarding water management, i.e., conservation plans, Mr. Bettencourt stated that there were no plans on file at the RI Dept. of Environmental Management (DEM) that he was aware of. Mr. Stamp indicated that farmers have these plans in their heads. The subgroup posited that the planning requirement of §46-15-7 5(b) only kicks in if the RI Water Resource Board has a water allocation plan “in force” (meaning unclear). Mr. Bishop stated that, in his opinion, plans are voluntary, and that among farmers with plans, there could be an unspecified benefit giving a user priority over another user who did not have a plan. However, the question is, can it be enforced?

Mr. Stamp used an example, explaining that he and Mr. Schartner owned a pond together. Mr. Stamp would not have a plan; however, Mr. Schartner might. The state could not necessarily stop one farmer from taking water with or without a plan. Mr. Bishop wants a response from Sen. Sosnowski concerning her position as the bill sponsor. Mr. Stamp theorized that the benefit of the plan is water conservation resulting from implementing plan provisions. He stated that rich farmers could hire attorneys to write the plans, and therefore, would be better off than poor farmers. Ms. McGreavy mentioned that in extreme times, the Governor has overriding emergency powers. Mr. Bishop asserted that property rights need to be recognized and that if farmers were tied to a plan, they would lose flexibility in operations.

Mr. Schultz wanted to know how the Fresh Water Wetlands Act fit in. For instance, do farmers get special treatment (exemption) if DEM finds there are only “insignificant alterations” to wetlands proposed? Does DEM have jurisdiction over farm ponds? He felt that water management plans would be helpful for farmers, and that maybe resources could be available to help farmers do plans. Mr. Stamp drew attention to the big picture in terms of the importance of food production over water supply for a growing world population. Mr. Bishop indicated he would challenge whether DEM has jurisdiction over: withdrawals under the Fresh Water Wetlands Act. Mr. Schultz agreed with farming exemptions which Mr. Bettencourt included in the report. Mr. Ayars stated that water use planning is integral to agriculture (whether written or oral). Mr. Stamp said that farmers try to implement Best Management Practices (BMPs) for irrigation. Mr. Bettencourt distributed an email from Lee Gardner, former director of the RI Farm Bureau. He stated that the US Dept. of Agriculture has generic management plans for farmers and offers cost-shares. He exclaimed that the farming industry is averse to doing management plans. The Natural Resources Conservation Service promotes BMPs and makes site visits.

Mr. Schultz asked whether conservation plans include water management. Mr. Bettencourt again indicated that the majority of farms would not work with government. Mr. Stamp reiterated that the agriculture community in Rhode Island is small. Mr. Garry read from the water allocation statute, indicating that at some point;

water allocation was going to happen. For the record, he asked for a confirmation that farmers do not see themselves fitting into the process.

Mr. Schock suggested the group get to the outline and report. Ms. McGreavy confirmed that the approach the Agriculture Group took was correct, as originally suggested by Mr. Thompson. Ms. Karp stated that this is a big issue, that is, what to do during times of water scarcity that can be caused by drought or over use. She recommended starting the analysis by referencing the existing authorities and asserted that water for domestic uses must be satisfied first. She posed several questions: 1) What do we do when water supply is short? 2) What legal rights prevail today? Do we need new authority, or does it already exist? Ms. Karp stated that water for drinking is more important than water for food, as we can get food elsewhere. Mr. Stamp mentioned that a terrorist event could alter food production and distribution. Ms. McGreavy stated that the committee was not dealing with a short-term water quantity issue precipitated by acts of terrorism. Mr. Bettencourt added that water could be purchased from out of state too.

2. Drought Management Group

Mr. Bishop explained the purpose of this subgroup which is to spell out a legal framework, a sort of dual system for normal times and in times of drought. The subgroup should also clarify the question of who gets water in drought and who pays for water during drought, which goes to the issue of private property rights. The committee must ask the question if the current legal environment is capable of responding to drought, and what would be the difference between emergency regulations during water shortage and normal times? Ms. Karp suggested that the regulatory authority diagram needs to be incorporated in Mr. Bishop's report, which authorities Mr. Bishop acknowledged. Mr. Bishop suggested a white paper on how current interests and existing structure of water rights would react to drought management, and whether Rhode Island needs further legislation. It is important to know what can be expected in terms of legal challenges. Mr. Shock added that the committee needed to identify deficiencies in water law or otherwise. Mr. Bishop referenced the Regulated Riparian Model Water Code as one tool to manage water but he would like to offer other management scenarios. Ms. Karp felt that Mr. Bishop's ideological viewpoint was not within the Water Right's Committee's charge. Mr. Bishop reiterated that he did not prefer an entirely regulated system. Ms. Karp referred to a previous handout describing the status of water rights that had been prepared by DEM staff lawyers several years ago. Ms. McGreavy clarified other facets related to the questions associated with drought management.

3. Groundwater Group

Mr. Garry indicated that Ms. Jacques and her intern are working on this assignment. Ms. Karp asked that Katherine Wallace's thesis be distributed to the group.

4. Takings Group

Mr. Garry indicated that he would try to get an intern to work on this. Ms. Karp and perhaps Ms. Beaver could help.

IV. ITEMS FOR DISCUSSION:

A. Updating the Regulatory Diagram

In light of the time, Ms. McGreavy briefly described feedback from the Water Allocation Program Advisory Committee and additional research findings regarding this item. She mentioned that the State Guide Plan Elements and the Special Area Management Plans might appear on both the planning diagram as well as the regulatory authority diagram. She will make changes to the diagram with advice from Ms. Karp and resend it out to all members. She also reported on an Interstate Compact administered by the New England Interstate Water Pollution Control Commission which primarily relates to water quality. Each New England state and NY gives NEIWPPC money for interstate planning. She added that the Out-of-Basin Transfer Committee is researching CT and MA laws and regulations.

B. Delegation of Sections of the Report

Ms. McGreavy suggested that each subgroup be responsible for the corresponding section of the report. The group agreed that a definition section should be last, but that a glossary could start being compiled anytime.

Sec. I - Introduction

Sec II – Subgroups

Sec III – Regulatory diagram with text

Sec. IV – Subgroups

Sec. V – To be determined

V. OTHER BUSINESS

Al Bettencourt reported the findings of the Priority Uses Committee. He explained that the committee did not devise a hierarchy of uses, just guiding criteria. Ms. Karp felt strongly that the committee should submit a letter of dissent, since a hierarchy was important to provide certainty and predictability.

VI. AJOURNMENT:

The meeting was adjourned at 3:35 PM. The next meeting will be held at the WRB on July 1, 2003 at 1:30 p.m.

Respectfully submitted,

John Garry
Office of RI Attorney General

Date